

**REPORT - PLANNING COMMISSION MEETING**  
**September 26, 2002**  
**October 10, 2002**

**Project Name and Number:** Tentative Parcel Map 7911 (Boccaleoni Parcels) (PLN2002-00127)

**Applicant:** Anthony Boccaleoni

**Proposal:** To consider Tentative Parcel Map 7911, a Variance to Fremont Municipal Code Section 8-2605(l) (lot depth), and a Modification to Subdivision Ordinance Section 8-1515(6) (lot depth) to subdivide one parcel into three single-family residential lots.

**Recommended Action:** Approve, based on findings and subject to conditions.

**Location:** 1300 Peralta Boulevard in the Centerville Planning Area.

**Assessor Parcel Number:** 501-1560-002-02

**Area:** 0.71 acres

**Owners:** Anthony Boccaleoni, Gorette Cunha, Joe Dutra

**Agent of Applicant:** n/a

**Consultant:** Levon Jalalian, Hawk Engineers, Inc.

**Environmental Review:** An Initial Study and Mitigated Negative Declaration were prepared for this project.

**Existing General Plan:** Low Density Residential, 5-7 dwelling units per acre.

**Existing Zoning:** Single Family Residential, R-1-6.

**Existing Land Use:** Vacant

**Public Hearing Notice:** Public hearing notification is applicable. A total of 64 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Peralta Boulevard, Kruger Avenue, Mowry Avenue, Ewe Way, Skelton Avenue, and Burdette Street. The notices to owners and occupants were mailed on September 16, 2002. A Public Hearing Notice was delivered to The Argus on September 11, 2002 to be published by September 16, 2002.

In addition, a Notice of Preparation of a Draft Mitigated Negative Declaration was delivered to The Argus on June 5, 2002.

**Background and Previous Actions:** The subject property is an infill lot that has never been mapped. The subject property contained one single family house built in approximately 1896 and five accessory structures. An historic evaluation was conducted by staff and determined that because the historic integrity of the structures had been compromised due to fire damage, demolition would be permitted. The site was cleared for future development in May 2002.

**Project Description:** The proposed project is for the subdivision of a 0.71 acre lot into 3 new parcels. The lot area for Parcel 1, will be 9,739 square feet, Parcel 2 is proposed at 9,532 square feet, and Parcel 3, will be 10,938 square feet. Access to the lots is proposed off Skelton Avenue, a local street that was established to serve future development of this parcel.

## **Project Analysis:**

**General Plan Conformance:** The existing General Plan land use designation for the project site is Low Density Residential, 5-7 dwelling units per acre. The proposed project is consistent with the existing General Plan land use designation for the project site because it would result in an increase of the development density from 1.4 dwelling units per acre to 4.2 dwelling units per acre.

**Zoning Regulations:** The project site is zoned Single Family Residential, R-1-6.

**Lot Size—** The minimum lot size for the R-1-6 zoning district is 6,000 square feet. The proposed lot sizes for the 3 proposed parcels conform to the zoning district requirements. The three proposed lots, at 9,739 square feet (Parcel 1), 9,532 square feet (Parcel 2), and 10,938 square feet (Parcel 3) are compatible with the lot sizes of adjacent properties. The adjacent residential lot sizes on Skelton Avenue and Burdette Street are approximately 7,000 square feet. The applicant is intending to construct three new two-story residences on the proposed parcels.

**Setbacks--**The R-1-6 building setbacks require a 20-foot front yard setback, 25-foot rear yard setback, and the following side yard setbacks: for one-story structures, one side 5 feet, total for both sides 12 feet; for two story structures, one side 6 feet, total for both sides 15 feet. Parcel 1 and Parcel 3 are proposed as flag lots which meet the setback requirements. The configuration for Parcel 2 proposes a substitution of the side yard and rear yard setbacks, allowed by FMC Section 8-2605(h), and thus meets the setback requirements.

**Street frontage—**The minimum street frontage for R-1-6 parcels is 35 feet (standard lot) and 20 feet for flag lots. The proposed subdivision meets these requirements by providing 20.14 feet of street frontage for Parcels 1 and 3 (flag lots), and 38.90 feet of street frontage for Parcel 2 (standard lot).

**Lot Depth—**As required in both the Fremont Municipal Code Section 8-2605(l), and Subdivision Ordinance Section 8-1515(6), the minimum required lot depth is 100 feet. Parcels 1 and 3 meet this requirement by proposing flag lots which are 124.68 feet and 118.00 feet deep, respectively, not inclusive of the "flag pole" portion of the lot. Parcel 2, at approximately 60 feet deep does not meet the minimum lot depth requirement. However, due to the lot dimensions of the existing parcel, and the fact that it is preferable to access the new lots from Skelton Avenue (a residential street) rather than Peralta Boulevard (a busier arterial street) staff recommends the approval of both the Variance to the Zoning Ordinance and the Modification to the Subdivision Ordinance in this instance. The Planning Commission has the authority to approve both variances and modifications, as stated in Section 8-22906(b) and Section 8-1803, respectively.

In the case of a variance, the following specific findings must be made. Staff supports approval of a variance from the zoning ordinance FMC Section 8-2605(l) in this case based on the following findings:

- a. This variance shall be subject to conditions that will assure that the adjustment hereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the project site is located because the requested variance of reducing the required lot depth will allow for three infill lots to be developed in keeping with the scale and pattern of the existing residential properties on Skelton Avenue.
- b. Because of special circumstance applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications because although Parcel 2 is proposed at less than the minimum lot depth, the parcel is wider than the minimum required. With the side and rear yard substitution the parcel is configured such that the minimum rear yard depth (25 feet) is met and the minimum front yard depth is exceeded (40 feet proposed where 20 feet is required).
- c. The conditions or situation of the specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make reasonable/practical the formulation of a general regulation for such conditions or situations because the proposed subdivision is an infill development project within an existing residential neighborhood and the reduced lot depth is in keeping with

the existing pattern of development.

**Open Space/Landscaping:** The project site contains several existing trees, of which the City's Landscape Architect has determined that one California Pepper Tree is to be preserved. To mitigate the removal of several mature canopy trees on the site, the applicant will provide and install 3 large canopy trees (minimum 36 inch box size) as street trees on Skelton Avenue and 1 large canopy tree (minimum 36-inch box size) on each of the three new parcels. In addition, the applicant is to provide and install other trees on the project site for screening and shading. (Condition #10)

**Circulation/Access Analysis:** Access to the existing lot is from Peralta Avenue. Conditional approval of this subdivision requires the relinquishment of this access. Access to the three new lots will be from a cul-de-sac at the end of Skelton Avenue. On site circulation requires a joint use driveway on Parcel 3 for the use Parcels 2 and 3. A joint access easement across Parcel 3 for the benefit of Parcel 2 will be required on the Final Parcel Map. The minimum width of the emergency vehicle access easement (EVAE) on Parcel 3 shall be 20 feet, consisting of a 16-foot wide driveway and a 4-foot wide landscape planter (Condition #13).

**Grading & Drainage:** This is an infill project. Grading of the site will conform to the surrounding development. Runoff of surface drainage will be to the public street and existing public storm drainage system in Skelton Avenue.

**Geology/Soils:** Two geotechnical reports entitled 1) "Fault Investigation—Proposed Subdivision, 1300 Peralta Boulevard, Fremont, California" dated May 2, 2002, by Steven F. Connelly, CEG, and 2) Geotechnical Site Investigation—1300 Peralta Boulevard, Fremont, California" dated June 11, 2001 were prepared for this project. The reports concluded that no fault trace was located on the site and that the proposed development is suitable for the site.

**Urban Runoff Clean Water Program:** The applicant will be required to conform to the City's Urban Runoff Clean Water Program requirements. Conditions of approval are included to reflect this requirement.

**Development Impact Fees:** This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, parkland dedication-in-lieu, park facilities, capital facilities and traffic impact for the two new lots created by this subdivision. These shall be calculated at the fee rates in effect at the time of building permit issuance.

**Environmental Analysis:** An Initial Study and Draft Mitigated Negative Declaration, have been prepared for this project. The environmental analysis identified concerns regarding potential impacts to hazards/hazardous materials, cultural resources, hydrology/water quality, and noise. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for this project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. Accordingly, a Draft Mitigated Negative Declaration has been prepared for consideration by the Planning Commission.

The following mitigation measures are associated with the project:

1. To mitigate the identified air quality impacts of grading and construction, the project will incorporate dust suppression measures. Dust generated on the project site shall be controlled by watering all exposed areas at least twice daily during excavation, and especially during clearing and grading operations. Additional watering on windy or hot days is required to reduce dust emissions. Stockpiles of sand, soil and similar materials shall be covered with a tarp. Trucks hauling dirt or debris shall be covered to avoid spillage. Paving shall be completed as soon as is practicable to reduce the time that bare surfaces and soils are exposed. In areas where construction is delayed for an extended period of time, the ground shall be revegetated to minimize the generation of dust. A person will be designated to oversee the implementation of the dust control program. During construction, streets adjacent to the project site that are used by construction vehicles shall be swept periodically to reduce dust. Implementation of the above-stated mitigation measures will reduce the identified air quality impacts to a non-significant level.

2. To mitigate the removal of mature trees on the site, the applicant will provide and install 3 large canopy trees with a minimum 36" box size as street trees along Skelton Avenue. The applicant is to provide and install 1 large canopy tree with a minimum 36" box size on each of the three new parcels. In addition, the applicant is to provide and install other trees on the project site for screening and shading.
3. Should any human remains or historical or unique archaeological resources be discovered during site development work, the provisions of CEQA Guidelines, Section 15064.5.(e) and (f) will be followed to reduce impacts to a non-significant level.
4. A fault investigation will be conducted by a geologist demonstrating that the project conforms to the requirements of the Alquist-Priolo Earthquake Fault Zoning Act. In accordance with the Alquist-Priolo Earthquake Fault Zoning Act the fault investigation has been completed, reviewed and approved. It has been determined that the site is suitable for the proposed development.
5. As part of the required Phase II environmental process, the applicant must remove any soils with elevated pesticide residues and dispose of it at the appropriate waste facility. Soil will be retested as needed to confirm removal of elevated pesticides to the satisfaction of all authorities having jurisdiction. This mitigation must be completed before grading commences on the site.
6. Standard water pollution and erosion control measures following Best Management Practices will be implemented to prevent storm water runoff pollution. Emphasizing storm water Best Management Practices (BMP) intends to achieve compliance with the goals of the **Alameda County Urban Storm Water Runoff Program**, in conformance with the Federal National Pollutant Discharge Elimination System (NPDES) program established by the Clean Water Act.
7. Construction hours will be limited by conditions of approval and no construction will be allowed on Sundays. Construction activities shall be limited to the following hours of operation: 7 a.m. to 7 p.m. Monday through Friday; 9 a.m. to 6 p.m. Saturday.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

**Response from Agencies and Organizations:** None.

**Enclosures:** Exhibit "A" (Tentative Parcel Map 7911)  
 Exhibit "B" (Findings and Conditions of Approval for Tentative Parcel Map 7911)  
 Exhibit "C" (Findings and Conditions of Approval for a Variance from FMC Section 8-2605(I))  
 Informational Item (Initial Study, Draft Mitigated Negative Declaration, Mitigation Monitoring Plan)

**Exhibits:** Exhibit "A" (Tentative Parcel Map 7911)  
 Exhibit "B" (Findings and Conditions of Approval for Tentative Parcel Map 7911)  
 Exhibit "C" (Findings and Conditions of Approval for a Variance from FMC Section 8-2605(I))

**Recommended Actions:**

1. Hold public hearing.

2. Find the initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Adopt draft Mitigated Negative Declaration and Mitigation Monitoring Plan and find it reflects the independent judgement of the City of Fremont.
4. Find that the Variance to Fremont Municipal Code Section 8-2605(I) and Modification to Subdivision Ordinance Section 8-1515(6) regarding lot depth are warranted, based on the site configuration and depth of the existing parcel, the fact that any subdivision design with lot access from Skelton Avenue compels the use of reduced lot depths, and the variance findings as enumerated in the staff report.
5. Find PLN2002-00127 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report.
6. Approve PLN2002-00127, as shown on Exhibit "A", subject to Exhibit "B" (Findings and Conditions for Tentative Tract Map 7911) and Exhibit "C" (Findings and Conditions for Variance from FMC Section 8-2605(I)).

**EXHIBIT "B"**  
**Findings and Conditions of Approval for PLN2002-00127**  
**TENTATIVE PARCEL MAP 7911 (TPM-7911)**  
**1300 Peralta Boulevard**

**FINDINGS**

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated October 10, 2002, incorporated hereby, and the testimony at the public hearing.

1. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards set forth in the Subdivision Ordinance.
2. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan and any applicable specific plans since the proposed lot configuration is in conformance with the **Low Density Residential, 5-7 dwelling units per acre** requirements of the General Plan.
3. The site is physically suitable for the type and proposed density of the development since the proposed lot configuration is in conformance with the **R-1-6, Single-Family Residential** requirements of the Zoning Ordinance.
4. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because the project will be an infill project within an existing single family neighborhood.
5. The design of the subdivision and the type of improvements are not likely to cause serious public health problems since the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
6. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. Acquisition of any new easements is required prior to final parcel map approval.

**CONDITIONS:**

1. Conformance with staff amended Exhibit "A", attached hereto and made a part hereof.
2. This Tentative Parcel Map (TPM) is being conditionally approved based on the accuracy of the information shown on Exhibit "A" and submitted with the TPM application. If any of the information is shown to be inaccurate subsequent to approval of the TPM by the City, such inaccuracy may be cause for invalidating this approval.
3. Only one final Parcel Map is allowed to accomplish the lot splits proposed by this tentative parcel map. No "Phasing" of final parcel maps is allowed.
4. Thirty days prior to commencement of any site grading, diskings, testing or clean-up required within the boundary of Tentative Parcel Map 7911, a site investigation shall be completed by a qualified wildlife biologist to determine the presence of burrowing owls. If burrowing owls are present, all work shall cease until the wildlife biologist has recommended appropriate actions to be taken to protect the owls. The applicant shall be responsible for the implementation of the protective actions, including relocation, prior to the commencement of any site work. The site investigation shall be subject to the approval of the Community Development Director.

5. Site grading and drainage is subject to the approval of the Development Organization Engineer at the time of building permit issuance. Site grading must not obstruct natural flow from abutting properties or divert drainage from its natural watershed. The drainage area map developed for the drainage design for this project shall be based on the original drainage area map developed for the existing storm drain system and shall clearly indicate all areas tributary to the project site.
6. Pursuant to FMC Section 8-1523, the record owner(s) are to dedicate the required street right-of-way and public easements as shown on the Exhibit "A". Any additional easements required by the various public utilities and public agencies shall be dedicated prior to final parcel map approval.
7. Pursuant to FMC Section 8-1416, direct access rights to Peralta Boulevard are to be relinquished to the public forever by dedication in the owner's statement on the final parcel map.
8. Pursuant to FMC Section 8-1522 and 8-3107, the subdivider is to improve or agree to improve the Skelton Avenue cul-de-sac frontage of the parcel map within one year of final parcel map approval. No permanent improvement work is to commence until improvement plans and profiles have been approved by the City Engineer. Improvements are to be installed to permanent line and grade in accordance with the City's subdivision improvement standards and to the satisfaction of the City Engineer. The minimum improvements which the subdivider is normally required to construct or agree to construct prior to acceptance and approval of the final parcel map by the City are as set forth in FMC Section 8-1522. Improvements to be constructed include:
  - Curb and gutter
  - Sidewalk
  - Driveways
  - Street paving
  - Fire hydrants
9. Pursuant to FMC Section 6-3104.5(h), this project is exempt from the requirements of the City of Fremont Underground Ordinance.
10. To mitigate the removal of several mature canopy trees on the site, the subdivider is required to provide and install 3 large canopy trees (minimum 36 inch box size) as street trees on Skelton Avenue and 1 large canopy tree (minimum 36-inch box size) on each of the three new parcels. In addition, the applicant is to provide and install other trees on the project site for screening and shading.
11. A Joint Access Easement across Parcel 3 for the benefit of Parcel 2 is required to accommodate the interior circulation system as shown on the site plan. Easement language should include maintenance responsibility of the joint use driveway.
12. Review of the tentative map by the Fire Department relative to local and State Fire Code is based on the material submitted. Therefore, if the map is revised prior to final submittal, the Fire Marshal should be contacted so that any changes may be properly reviewed and evaluated. The on-site and/or off-site fire hydrants were required, as per tentative parcel map annotations, in accordance with Fremont Fire Code Article No. 13.
13. The minimum width of the emergency vehicle access easement (EVAE) on Parcel 3 shall be 20 feet, consisting of a 16-foot wide driveway and a 4-foot wide landscape planter.
14. The subdivider shall provide additional fire protection as required by Fire Department for proposed dwellings on Parcels 2 and 3. These dwellings shall be fully fire sprinkled including closets and attics. Compliance shall be required prior to issuance of final building permit.
15. The subdivider is required to provide a cash payment to the City of Fremont for imaging the recorded parcel map and "Record" improvement plan. The subdivider is also required by ordinance to provide the City with a mylar copy of the recorded parcel map subsequent to its recordation, and to provide a mylar copy of the "Record" improvement plan prior to acceptance of the improvements by City Council.

16. The subdivider is required to seal existing wells on the site per Alameda County Water District specifications. The sealing of existing wells is required prior to approval of the final Parcel Map.
17. Any development on this site will be subject to City wide Development Impact Fees. These fees may include fees for fire protection, capital facilities, park land dedication in lieu, park facilities, and traffic impact. The fees shall be calculated at the rate in effect at the time of building permit issuance. The fees will be collected prior to building permit approval.
18. In accordance with Section 66474.9(b) of the Subdivision Map Act, the subdivider shall indemnify and hold harmless the City of Fremont or its agents, officers, or employees from any claim, action, or proceeding against the City of Fremont or its agents, officers, or employees to attack, set aside, void, or annul an approval of the City of Fremont, advisory agency appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.

The City of Fremont shall promptly notify the subdivider of any claim, action, or proceeding to attack, set aside, void or annul its approval and shall cooperate fully in the defense.

SUBDIVIDER PLEASE NOTE :

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of tentative parcel map approval. Any fee, dedication, reservation or other exaction is deemed imposed on the date this tentative parcel map was approved (10/10/02). The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date they are imposed. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

tpm-7911.cnd



**EXHIBIT "C"**  
**Findings and Conditions of Approval for PLN2002-00127**  
**Variance**  
**1300 Peralta Boulevard**

**FINDINGS**

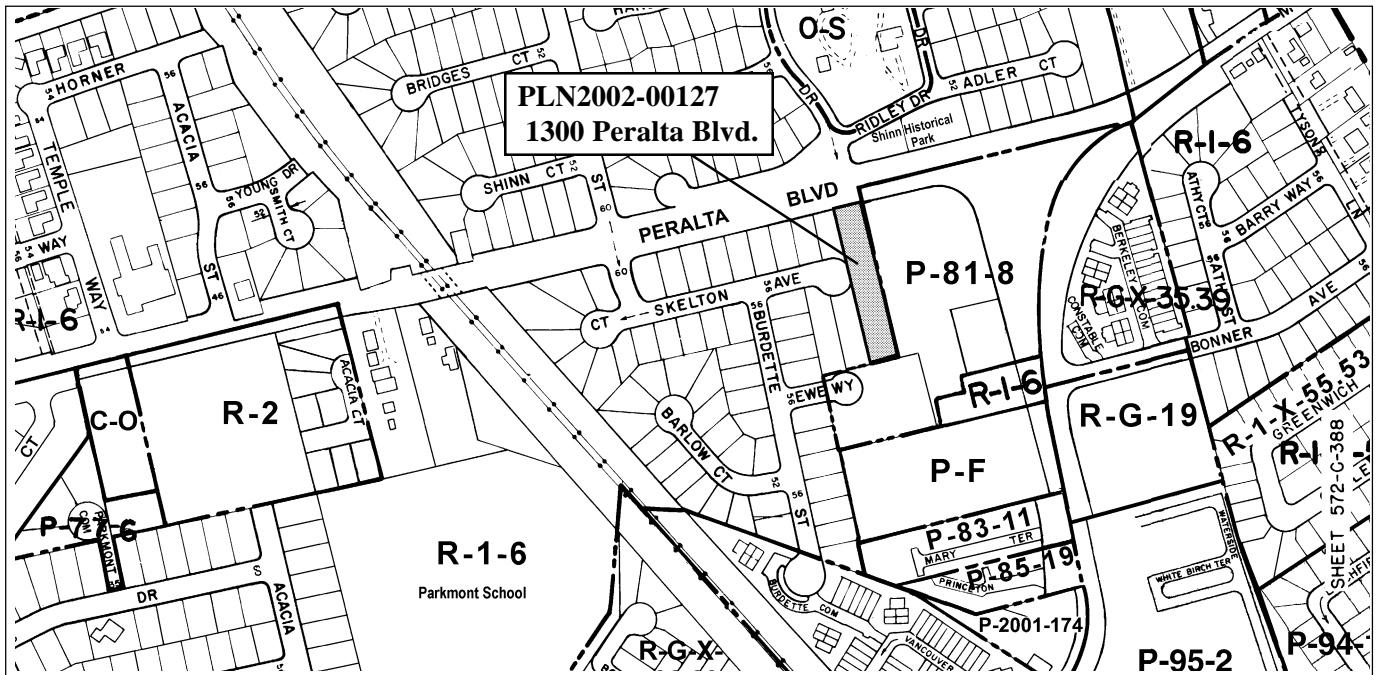
The findings for a variance from the zoning ordinance FMC Section 8-2605(l) below are made on the basis of information contained in the staff report to the Planning Commission dated October 10, 2002, incorporated hereby, and the testimony at the public hearing.

- a. This variance shall be subject to conditions that will assure that the adjustment hereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the project site is located because the requested variance of reducing the required lot depth will allow for three infill lots to be developed in keeping with the scale and pattern of the existing residential properties on Skelton Avenue.
- b. Because of special circumstance applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications because although Parcel 2 is proposed at less than the minimum lot depth, the parcel is wider than the minimum required. With the side and rear yard substitution the parcel is configured such that the minimum rear yard depth (25 feet) is met and the minimum front yard depth is exceeded (40 feet proposed where 20 feet is required).
- c. The conditions or situation of the specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make reasonable/practical the formulation of a general regulation for such conditions or situations because the proposed subdivision is an infill development project within an existing residential neighborhood and the reduced lot depth is in keeping with the existing pattern of development.

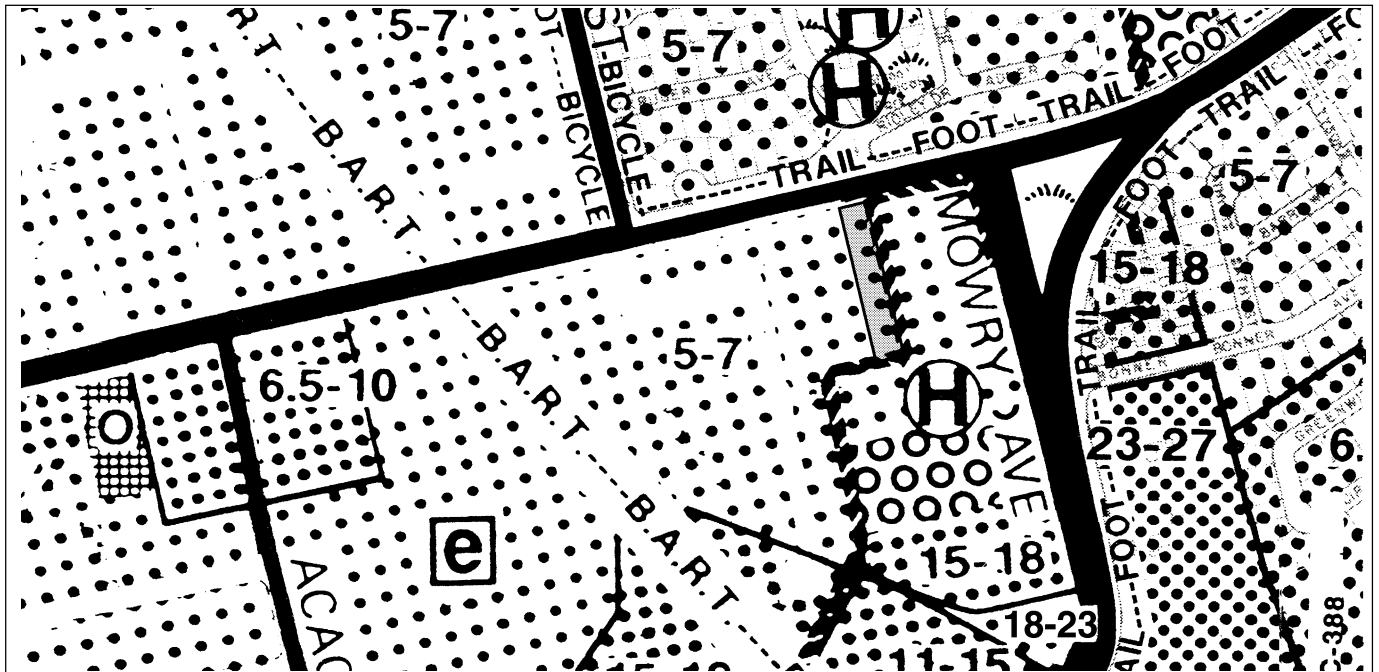
**CONDITIONS**

1. For any future fencing proposed for parcels 1, 2 and 3 on TPM 7911, a fencing plan shall be submitted for review and approval by the **Development Organization**. The fencing plan should include the following requirements: Fencing between Parcel 2 and Parcel 3 from the street to the end of the driveway proposed on Parcel 2 (the "flag pole" portion of Parcel 3) shall be no greater than 4 feet in height. Fencing between Parcel 1 and 2 along the "flag pole" portion of Parcel 1 shall be no greater than 4 feet in height. Other fencing on the property shall otherwise comply with the fence height requirements set forth in the Fremont Municipal Code.

# INFORMATIONAL



Existing Zoning



Existing General Plan

**Project Number:** PLN2002-00127(TPM)  
**Project Name:** Tentative Parcel Map 7911  
**Project Description:** To consider Tentative Parcel Map 7911 and Variance to Fremont Municipal Code Section 8-2605(I) (lot depth) and Modification to Subdivision Ordinance Section 8-1515(6) (lot depth) for 3 single-family residential lots on 0.71 acres in the Centerville Planning Area.

**Note:** Prior arrangements for access are not required for this site.

